



Environmental Policy and the Public

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Not long ago, our country was wracked by dramatic environmental disasters. Smog choked our urban centers. Plant and animal species, including our national symbol the bald eagle, were being pushed to extinction. Drinking water was polluted with sewage and harmful chemicals. Rivers caught fire. Homes built on toxic waste dumps caused birth defects in children.

Our country was booming economically. In the glory days of post-war prosperity, Americans reveled in the glut of consumerism. Modern American culture has the pop-top, disposable, planned-obsolescence, shop-until-you-drop, consume-all-you-can mentality woven into almost every corner of our national fabric. Household items cannot be fixed—we must throw them away.

Soon we learned that there was no “away” left to throw things. We began to gag on our garbage as our landfills overflowed. People could now see that the great frontier had been conquered and the natural resources our grandparents assumed to be limitless were being lost forever. Seeking a more sustainable and responsible way of life became not just a moral conviction for the benefit of our cousin species or future generations, it became a necessary step to protect our own health and survival.

America's Democracy slowly began to respond to the new environmental ethic and awareness growing in the public consciousness. Laws were passed to assure the careful and healthful use of limited resources. We now live in a country where almost every aspect of the natural environment is regulated and controlled. The continent is buffered from the pressures of human population by a thicket of red tape and regulation.

Any business discharging pollutants into the air or water is governed by volumes of rules and laws. The use of land and water is carefully scrutinized by government. CWA, CAA, SDWA, CERCLA, RCRA, FIFRA, TSCA, MPRSA, UMTRCA, NPDES, NEPA—the nation's law books are clogged with an alphabet jumble of regulations, each governing its own corner of the environmental house.

The law I will speak to you about is one of the first-born in the new age of environmentalism. It is the Environmental Impact Statement law, Hawai'i Revised Statutes (HRS) Chapter 343, sometimes referred to as HEPA, the Hawai'i Environmental Policy Act. I call HRS 343 the “mother of all environmental laws.” Not just because it came before many of the more specific anti-pollution laws but because it lays the democratic cornerstone on which the other laws are built. The philosophy behind environmental impact statements runs to the core of our nation's democratic traditions. An Environmental Impact Statement is a living example of our country's trust in an educated populace.

The law describes certain kinds of development projects that must undergo an environmental study before they can be built. For example, any project that uses state or county funds or any development on land designated for conservation by the state is required to prepare a study.

Some small projects can be declared exempt from the law. Many projects that are not likely to have a significant effect on the environment can be built after completing a relatively simple Environmental Assessment. Large projects like a convention center or new airport or resort hotel that will likely have a significant environmental impact must complete a full Environmental Impact Statement prior to beginning construction.

When a draft Environmental Assessment or Impact Study is published, the public is asked to comment on the content and adequacy of the document. The law requires that the project proposer respond to all comments in the final document.

My office, the Office of Environmental Quality Control (OEQC), gives notice of these documents and encourages public participation through the publication of our twice-a-month bulletin, *The Environmental Notice*. Subscriptions are free, and we post the document on the Internet. About 1000 people, everyone from environmental activists to professional planners and elected officials, receive our newsletter in the mail.

The last step in the review process is the acceptance



of the final environmental study. Either a government agency or the Governor must accept a Final Environmental Impact Study as being complete before a project can proceed. If a member of the public believes that a document is incomplete or that proper procedures were not followed, he has the right to sue in court to stop a project until all the provisions of the law have been followed.

An EIS is designed to bring the best possible scientific analysis together with concerns and knowledge in the public. The result should be enlightened decision making. That is the theory, but does it work in practice? Are better decisions made just because the law requires the project to be the subject of an environmental study and public scrutiny? Or, is an EIS just another bureaucratic burden borne by developers and a disincentive for economic development?

Some environmentalists would argue that many developers treat the EIS as a procedural technicality and not a planning tool. The law, they say, lacks the teeth to stop irresponsible development projects that will harm the natural environment and the human community. Many in business would argue that the law needlessly consumes vast sums of money and time and thus hinders the rights of property owners.

Somewhere between those polar perceptions lies the reality of our environmental review system. Our EIS process serves as an early warning system that encourages community participation in decision making and guarantees a citizen's right to information. Vigilant people depend on the disclosure required by the law to learn what developers are planning for their community. Citizen protectors of the environment help to guarantee that any significant impact on the natural ecosystem is scientifically scrutinized and measured.

And while the requirement to prepare an EIS does not ensure a developer will conform with the public's preferences or agree to "sustainable" development, it does encourage planners to avoid harmful impacts on the environment and be more sensitive to community concerns. Although a development project is rarely abandoned because of the findings in an EIS, it is safe to say that most designs are improved and environmental impacts more likely mitigated because of the process.

For example, take the county road project in Puna on the Big Island of Hawai'i. The county government proposed buying a private dirt road and improving it to ensure ambulance and fire protection services to the

community. Well, what could be the environmental impact of such a well-meaning project?

The project required an environmental study. Word of the road plans got out to the community. My office was soon deluged with calls and faxes from all corners of the state and even from around the globe, raising dire concern about the road project. Some residents knew that under this road lay an extensive network of lava tubes and caves, including the longest such cave in the world. Inside these dark caverns dwell a unique array of rare bugs. Heavy equipment used to build roads has been known to crush through the tops of these lava tubes and disappear into the dank depths of ancient lava flows. This is an obvious danger to the bulldozer driver but also a threat to the subterranean ecosystem.

The public outcry was such that the county took notice and established new procedures to protect the cave ecosystem under their new road. If not for our EIS system and its guarantee of community participation and comment, one of Hawai'i's unique natural treasures and even a human life could have been jeopardized. This is just one example of how an educated and involved public is crucial to a democracy, and within a democracy, crucial to the preservation of the natural environment. Neither the bureaucrats embedded in government agencies nor the advocates of land development can be trusted to consistently make enlightened land use decisions. Only to the extent that the public cares about environmental preservation and has access to vital information, can we ensure appropriate government policy.

Chapter 343 is the method we use to ensure that the people themselves are empowered as environmental police. The law strikes a balance between a developer's desires and the needs of the community of living things. But although the environmental assessment of development projects will assist developers to make correct choices, the law does not stop development. The law merely requires that studies be performed before some types of development can take place.

Let's take a look at the impact that centuries of development has had on the environmental health of the Hawaiian Islands. The following data was collected by my staff, student interns, and the Environmental Council to help assess the environmental health of the Hawaiian Islands today. We call them indicators. They indicate that we have a very long way to go before we can claim we are sustaining our environment. In the past 5 years domestic potable water use has increased more



than 6.5 percent in the state. Over the same time our *de facto* population has increased by 3 percent. Our use of drinking water is increasing twice as fast as our population. Clearly, government's efforts to encourage water conservation have failed.

Statewide, 11 percent of our drinking-water wells have been polluted by pesticides or other man-made chemicals.

Of the nearly 2 billion tons of garbage generated in Hawai'i each year, less than one-fifth is reused or recycled. And all the major landfills in the state have less than 10 years of capacity left.

As we speak, the State of Hawai'i, although blessed with rich resources of solar, wind, and ocean energy, remains about 95 percent dependent on the importation of fossil fuel, oil and coal, for our energy needs.

Last year, 82 separate oil spills took place in Hawai'i.

Of all the plants established in Hawai'i, only about one-half are native to the islands. Six in ten of the remaining natives are rare or endangered in some way. Over 100 native plants have already become extinct.

Due to the rising seas and constant construction too near the coastline, O'ahu has seen approximately 24 percent of its natural sandy beaches narrowed or lost in the past 70 years.

Can we sustain Hawai'i's tourism-based economy without clean water to drink and without clear oceans to swim in? Will tourists come and spend their money here if the unique nature of our islands has been paved over?

The Hawai'i of today is not the Hawai'i I was born into. Today, our native people are finding their traditional fishing grounds and walking trails blocked by new resorts and luxury housing developments.

Today's Hawai'i is not the Hawai'i many visitors expect to find when they venture here. The palm tree groves have been displaced by high-rise hotels. The surf sites are crowded. The agricultural land is paved with shopping malls, and traffic chokes roadways.

The environmental protection laws of the state depend upon the enlightened participation of an educated public to ensure that proper decisions are made by the people's government. This quick look at the many environmental challenges that confront our state, and our many failings to grapple with them, suggests that our leaders need more enlightenment and our people need a better education. I hope this presentation has made one small contribution to that cause.

Questions

Q: Are you aware of the plasma-burning facility on Kaua'i that's being constructed to burn waste, and is there any future view of looking at that technology for more of Hawai'i's overall trash problem?

A: I'm aware of it. I don't profess to be an expert or directly involved in that regard. You know here on O'ahu, which I am more familiar with because of my time on the city council, 80 percent of our solid waste is shredded up and burned and converted to energy. I personally believe that combustion is probably going to remain, and rightfully so, one component of our waste management strategy. However, we're doing very little statewide now to promote economic development in the recycling industries. You know, handling composting, yard waste, and turning plastic into lumber and building materials is still in its infancy, and we should be far ahead of where we are. There is new technology in combustion, and I don't know the details of the plasma plant, but the state gets involved in the broad planning sense and most of that work is done at the county level.

Q: What are your thoughts and strategies for non-point source pollution as far as your office is concerned?

A: I have to enter in a little caveat here. Many of the detailed issues, non-point source pollution or solid waste or clean water, are handled by other divisions in the Health Department. Although OEQC has a very broad and impressive name, it was because we were there first, and then many of these programs came up under different mandates. The Health Department has different divisions to handle each of those separate issues. So, I can only tell you in a very broad-brush manner what's going on with non-point source pollution management. Was there a particular issue that you wanted to address in that, or did you just want hear about non-point source pollution, because you could go on all day on that subject?

Q: Mainly dealing with watersheds or aquifers.

A: Well that's the way planning is going. It makes particular sense here in Hawai'i, the whole ahupua'a land management system that the Hawaiians devised out of necessity and their own enlightenment over the years. It still makes a lot of sense, and I think we see the state moving in that direction. We have plotted the aquifers on GIS. As we look to polluted run-off and how to manage it, you do look in watershed blocks. The most work



is going on, that I'm aware of, on the Ala Wai Canal Watershed, because it's the biggest, most visible, and probably one of the most polluted watersheds in the state. I had the opportunity to speak to some delegates from nations around the Pacific Rim and Tahiti and Australia and talk about sustainable development, and I just had to look out the window (at Waikiki) and see what sustainable development is not. If they didn't believe me, I invited them for a swim in the Ala Wai Canal. They didn't take me up on that. So if we can learn how to clean up the Ala Wai Canal, we'll learn how to clean up virtually every watershed in the state. It's going to be very costly. It's going to require a change of human activity. People have to realize they can't just put chlordane in their gardens and under their house and spread their fertilizer wildly in the back of Manoa if they're going to preserve the water quality in Manoa Stream and in the Ala Wai Canal. It's a big education effort, a big concentration of resources, but as far as I know the Ala Wai Canal watershed is the test case that we're working on.

Q: I'm interested to know how your office relates with the planting of forests. Is it necessary to have environmental statements? To what degree?

A: That's a very good question. The two triggers that you're going to stumble across with forestry projects is any use in the conservation district, if you require a CDUA permit, you may or may not need to perform an environmental assessment. We're grappling right now with the Forest Stewardship Program. That's the use of state funds, so is that a trigger for an Environmental Assessment? Likely it can be; it depends on the nature of the activity. One other element that I didn't really get into, for example, the trigger for a study, is the use of state or county funds, but you use state funds to buy staples, and a xerox machine and paper supplies and that obviously doesn't trigger an Environmental Assessment. There are broad categories of activities which are exempt although they may use state funds. How that works is, each department has an exemption list of the kind of activities that they perform on a routine basis that they know don't have a significant impact on the environment. They disclose those projects or those activities, which may be trimming the trees in the park or mowing the grass or minor landscaping activities, re-aligning conduits, things like that. You have to look at the exemption list of that agency to see if that activity

is exempt or not.

Q: We're kind of missing the point here. What I'm asking basically is, if I want to plant a thousand acres of trees, am I going to have to do an Environmental Impact Statement to be able to get permission?

A: Are you using state funds?

Q: You're saying only if you're using state funds?

A: Yes, if you're on private land and you don't require any rezoning or reclassification and you're using your own money, go for it. You might need some other kind of permits.

Q: Gary, do you think the process as mandated by a 343 is working, or is it pretty much confined to other agencies and maybe public interest groups. Like the community effort you referred to in Puna, is that the norm or is that an anomaly that just seemed to happen on that project?

A: I think the system is working. I think it needs constant refinement. There are huge windows that are gaping open for certain projects to go through without any review. For example, there's no trigger for a power plant, there's no trigger to study a sewage treatment plant. Both of these things you would consider to normally have major impacts on the environment. They're going to release toxins into the air or the water. There's no provision in the law to perform a study on those and consider all the mitigation measures prior to their development. If, for example, you have a power plant in Campbell Industrial Park, which is zoned industrial and you're using all private money for it and you're not on the coastline, there's no way for us to consider the impacts of having yet another smoke stack at Campbell Industrial Park. They'll just go and do it and they'll go through to the permit level. The Clean Air Permit is administered by the Health Department, and they have very little discretion about saying yes or no to the project at that point. All they can say is you have a smoke stack and you have to remove this much particles from the air before you get your permit. There are refinements that are needed, but 343 is a very important fundamental element. Not just to protect the environment but to ensure community involvement and participation. We get that all the time. There may be 50 to 60 percent of the projects that come through our office that are not controversial, and we're getting rid of a bunch of those just because it's overlapping bureaucracy. For example, DAGS was bringing in these Environmental Assessments



for putting chain link fences around school yards. They don't need to do that. A lot of the little things that don't need to be done, we're helping the agencies save their time and paperwork and just go and do the project. But many other things that you wouldn't suspect, like the Puna road project, the convention center, the Kaiwi Park situation with the golf course out at Queen's Beach, the Le Jardin School, many of these things are going through public review very actively. If the law weren't here to ensure public participation, you would see a revolt in the communities when they say, "Who allowed this and how come we didn't know about it?" So, for the very least, even if we're talking about community concerns and not directly environmental concerns, the law plays a very important role.